

**United States Department of Labor
Employees' Compensation Appeals Board**

E.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bronx, NY, Employer**

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**Docket No. 21-1046
Issued: April 15, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 30, 2021 appellant filed a timely appeal from May 27 and June 8, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$663.37 for the period July 18 through December 5, 2020, for which he was without fault, because OWCP failed to deduct postretirement basic life insurance (PRBLI) premiums from his wage-loss compensation; (2) whether OWCP

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 8, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$50.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On December 6, 2018 appellant, then a 60-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2018 he strained his shoulders while pulling up a gate to open a station while in the performance of duty. He stopped work on November 27, 2018 and worked intermittently thereafter. OWCP accepted the claim for bilateral rotator cuff tear, bilateral superior labrum anterior posterior (SLAP) tear, bilateral shoulder internal derangement, left rotator cuff tendinitis, right ganglion cyst, left biceps tendon partial tear, and cervical radiculopathy (cervical spine impingement). It paid appellant wage-loss compensation for total disability on the supplemental rolls from January 11 through October 12, 2019, and on the periodic rolls from October 13, 2019 through December 4, 2021.

In a letter dated June 25, 2020, the employing establishment requested OWCP update appellant's life insurance code from Z1 to LO effective February 15, 2020. In support of this request, the employing establishment submitted a notification of personnel action PS Form 50 dated February 13, 2020, which reduced appellant's life insurance from Z1 to LO effective February 15, 2020.

OWCP received a Life Insurance Election Form Standard Form (SF) 2817) dated February 4, 2020 in which appellant elected deductions for basis life insurance and Option B -- additional life insurance two times his pay effective February 15, 2020.

In a letter dated August 18, 2020, OWCP notified appellant of his continued entitlement to compensation benefits, effective October 13, 2019. It advised him that it was making deductions from his compensation payments for basic life insurance (BLI) premiums in the amount of \$19.20 and optional life insurance (OLI) premiums in the amount of \$290.20 every 28 days. OWCP requested that appellant notify it immediately if such benefits were not being deducted from his wage-loss compensation.

In a supplemental roll payment worksheet dated October 7, 2020, OWCP indicated that deductions for option Z1 life insurance were made from February 15 through October 10, 2020 in the amount of \$2,477.06 instead of the elected option LO of \$1,033.85. It noted that appellant was due a refund of \$1,433.21.³

In a letter dated November 19, 2020, the Office of Personnel Management (OPM) informed OWCP that appellant, as a compensator, was eligible to receive continued life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI) program. It notified OWCP that he had elected PRBLI with no reduction and Option B times two with no reduction. OPM indicated that the effective date of appellant's PRBLI deductions was July 18, 2020 and that

³ By decision dated October 7, 2020, OWCP suspended appellant's compensation benefits, effective October 11, 2020, due to his failure to submit the financial disclosure statements (Form CA-1032s), as requested. It noted that, if he completed and returned an enclosed Form CA-1032, his compensation benefits would be restored retroactively to the date they were suspended.

his final base salary was \$64,258.00. It enclosed a FEGLI continuation of life insurance coverage form (SF 2818) signed by appellant on September 17, 2020 electing PRBLI with no reduction and Option B times two with no reduction.

On December 18, 2020 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$663.37 because it failed to deduct PRBLI premiums from his wage-loss compensation for the period July 18 through December 5, 2020. It informed him of its preliminary determination that he was without fault in the creation of the overpayment because it erred in calculating the benefits, and it was not shown that he had actual knowledge of the calculation error. OWCP did not provide the calculation of the overpayment amount.⁴ It requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, OWCP notified him that within 30 days of the date of the letter he could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing.

On January 12, 2021 appellant disagreed that the overpayment occurred and requested waiver of recovery because he was found to be without fault in the creation of the overpayment.

In a separate undated statement, appellant noted using the FEGLI calculator to determine his life insurance payments and options. He reported contacting an OWCP claims examiner on January 12, 2021 to advise her that his premiums of \$278.00 a month were too high for him to afford. Appellant submitted calculations from the OPM Continuation of Coverage after retirement calculator dated January 13, 2021.

In an overpayment action request form dated January 17, 2021, appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. He requested waiver of recovery of the overpayment and submitted a Form OWCP-20, completed on January 17, 2021, noting that he had \$5,328.00 in monthly income.⁵ Appellant also listed monthly expenses of \$4,538.00⁶ and assets of \$200.00 in cash on hand, \$1,450.00 a checking account, and \$300.00 in a savings account for a total of \$1,950.00. No supporting financial documentation was received. Appellant provided a "without fault statement" noting that he changed his life insurance because the premiums were too high. He noted using the FEGLI calculator to estimate his payments reducing his coverage from five multiples to two multiples of his salary. Appellant confirmed these calculations with a representative of FEGLI. He noted his previous life insurance deduction was \$140.32, which increased to \$278.23 without explanation.

⁴ In a supplemental rolls payment worksheet dated December 18, 2020, OWCP noted the PRBLI premium was calculated as \$663.37 for the period July 18 through December 5, 2020.

⁵ Appellant reported \$1,080.00 of Social Security Administration (SSA) benefits and \$4,248.00 in FECA benefits and his wife's retirement for total monthly income of \$5,328.00.

⁶ Appellant noted monthly expenses of rent or mortgage of \$1,964.00, food of \$650.00, clothing of \$200.00, utilities of \$200.00 and other expenses of \$700.00. He noted monthly installment debt for credit cards of \$824.00.

A telephonic hearing was held before an OWCP hearing representative on April 21, 2021. Appellant testified that it was not until the hearing that he understood how the overpayment occurred and he asserted that he was not at fault.

By decision dated May 27, 2021, OWCP's hearing representative finalized the December 18, 2020 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$633.37 because PRBLI premiums were not properly deducted from his compensation benefits for the period July 18 through December 5, 2020. OWCP further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because his monthly income exceeded his monthly expenses by more than \$50.00. It required recovery of the overpayment by deducting \$50.00 from appellant's continuing compensation payments every 28 days.

By decision dated June 8, 2021, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of wage-loss compensation in the amount of \$663.37 for the period July 18 through December 5, 2020 because it did not deduct PRBLI premiums from his compensation benefits. It further found that he was without fault in creation of the overpayment, but that he was not eligible for waiver of recovery of the overpayment as he had not submitted financial evidence to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP noted the memorandum within the preliminary overpayment determination was not fully detailed because the wrong version was bronzed into the file. However, it indicated that there was sufficient information in the preliminary overpayment determination and in the file which supported the decision rendered.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁷ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁸

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁹ The coverage for BLI is effective unless waived,¹⁰ and premiums for BLI and OLI coverage are deducted from the employee's pay.¹¹ Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8129(a).

⁹ *Id.* at § 8702(a).

¹⁰ *Id.* at § 8702(b).

¹¹ *Id.* at § 8707.

or compensation payments.¹² BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹³ however, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his or her compensation.¹⁴

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by 2 percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by 1 percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹⁵

When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$663.37, for the period July 18 through December 5, 2020 for which he was without fault, because OWCP did not withhold PRBLI premiums from his FECA compensation.

OWCP did not deduct the PRBLI premium of \$663.37 from appellant's wage-loss compensation benefits for the period July 18 through December 5, 2020. As such, it calculated the amount of the resulting overpayment as \$663.37. The record contains the compensation payment record, as well as an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred.

While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at whatever option he or she had selected.¹⁷ Moreover, as

¹² *Id.* at § 8706.

¹³ *Id.* at § 8707(b)(2).

¹⁴ *Id.* at § 8706(b)(3)(B). See *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, Docket No. 17-1733 (issued March 26, 2018).

¹⁵ See *I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁶ 5 U.S.C. § 8707(d); see also *J.H.*, *supra* note 14; *B.B.*, *supra* note 14.

¹⁷ 5 C.F.R. § 870.504(b); see *J.H.*, *supra* note 14; *S.P.*, Docket No. 17-1888 (issued July 18, 2018). Cf. *Charles F. Huisman*, Docket No. 93-2298 (issued January 29, 1996); *John E. Rowland*, 39 ECAB 1377 (1988).

noted, when an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁸

The Board, thus, finds that OWCP properly determined the fact and amount of the overpayment. As OWCP failed to properly deduct PRBLI premiums for the period July 18 through December 5, 2020, appellant received an overpayment of \$663.37 during this period.¹⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.²⁰

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.²¹ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²²

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. This information is also used to determine the repayment schedule, if necessary.²³ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.²⁴

¹⁸ 5 U.S.C. § 8102.

¹⁹ *J.H.*, *supra* note 14; *I.J.*, Docket No. 19-1672 (issued March 10, 2020); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

²⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

²¹ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

²² *Id.* at § 10.437(a)(b).

²³ *Id.* at § 10.438(a).

²⁴ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²⁵

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because he has not shown both that he needs substantially all of his current income to meet ordinary and necessary living expenses and that his assets do not exceed the allowable resource base. His monthly income of \$5,328.00 exceeds his monthly ordinary and necessary expenses of \$4,538.00 by \$790.00. As appellant's current income exceeds his current ordinary and necessary living expenses by more than \$50.00, appellant has not shown that he needs substantially all of his current income to meet current ordinary and necessary living expenses.²⁶ Because he has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test, *i.e.*, whether appellant's assets do not exceed the allowable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because he has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt or that he relinquished a valuable right or changed his position for the worse in reliance on the payment which created the overpayment.

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, he has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$663.37 overpayment.

On appeal appellant argues that he was without fault in the creation of the overpayment and OWCP's hearing representative did not properly consider that the insurance calculator was confusing to use and appellant did not understand how to interpret the results of the calculator. A finding that appellant was without fault, however, does not automatically result in waiver of the overpayment.²⁷ OWCP must determine whether recovery of the overpayment without defeat the purpose of FECA or be against equity and good conscience. As explained, OWCP properly denied waiver as recovery would not defeat the purpose of FECA or be against equity and good conscience.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same.

²⁵ 20 C.F.R. § 10.438.

²⁶ *Supra* note 21 at Chapter 6.400.4a(2).

²⁷ *See L.G.*, Docket No. 19-1274 (issued July 10, 2020).

If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$50.00 from appellant's continuing compensation benefits, every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$50.00 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information submitted by appellant as well as the factors set forth in section 10.441 and found that this method of recovery would minimize resulting hardship on appellant. Therefore, OWCP properly required recovery of the overpayment by deducting \$50.00 from appellant's compensation payments, every 28 days.²⁹

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$663.37, for the period July 18 through December 5, 2020, for which he was without fault, because OWCP did not withhold PRBLI premiums from his FECA compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required repayment of the overpayment by deducting \$50.00 from his continuing compensation payments every 28 days.

²⁸ 20 C.F.R. § 10.441(a).

²⁹ *See id.* at § 10.438. *See also* A.F., Docket No. 19-0054 (issued June 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 27 and June 8, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 15, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board